

Department of Revenue
Division 10—Director of Revenue
Chapter 41—General Tax Provisions

Proposed Amendment

12 CSR 10-41.030 Power of Attorney

PURPOSE: This amendment provides guidance as to when a power of attorney is required to be provided by the taxpayer to allow disclosure of confidential Missouri tax information about the taxpayer to [his/her] the taxpayer's authorized representative.

(1) The [d]Director of [r]Revenue or other designated official of the Missouri Department of Revenue is permitted to disclose all tax information, returns, reports or facts relating to a particular taxpayer's return to the duly authorized representative of the taxpayer with respect to the tax matter designated by the taxpayer.

(2) Except as otherwise provided by regulation, in order for a third party to qualify as a duly authorized representative, the taxpayer must execute and file with the Department of Revenue a power of attorney designating the third party as taxpayer's duly authorized representative. [Power of Attorney/Disclosure of Information forms are available upon request from the Department of Revenue.]

[(A)3] A duly authorized representative may [be]include, but is not limited to, a person currently employed by the taxpayer[with job duties that include but are not limited to the following:

1. Responsible for answering correspondence dealing with state tax matters in a confidential manner;
2. Responsible for answering verbal communication requests from a tax authority dealing with state tax matters;
3. Responsible for reviewing state tax matters and submitting requested information from a tax authority; and
4. Responsible for preparing tax documents (but not necessarily responsible for signing such documents) to be filed with a tax authority;

(B) The person must submit a letter, upon request by the tax authority, that s/he has the authority to perform the above job duties as his/her regular course of work on tax matters and that the information requested is strictly to be used only for the purpose of determining the taxpayer's accurate tax calculation or to determine the amount of tax payments actually submitted by the taxpayer. Such document shall be on company letterhead with the company's address and phone number.

(C) State tax matters include all taxes and fees administered by the], a
[(3) Third party includes the] tax return preparer, a certified public accountant [and], or
an attorney.

(4) The power of attorney must be executed as follows:

(A) Individual. In the case of an individual taxpayer, by the individual;

(B) Husband and Wife. In the case of any taxable year for which a combined return was made, by both husband and wife if both are to be represented by the same representative, except that either spouse may sign for the other if the signature is duly authorized in writing by the other spouse. In the case of any taxable year for which a combined return was made, by either the husband or the wife if both are not represented by the same representative; however, the representative cannot perform any act with respect to a combined return year that the spouse represented cannot perform alone;

(C) Partnership. In the case of a partnership, by all members or by one of the partners duly authorized to act for the partnership, who shall certify that s/he has authority;

(D) Corporation. In the case of a corporation, by an officer of the corporation having authority to bind the corporation, who shall certify that s/he has authority;

(E) [Estate.]Limited liability company. In the case of [an estate]a limited liability company, by [any personal representative]all members or by one duly authorized to act for the limited liability company, who shall [provide evidence of his/her status as a personal representative with regard to Missouri estate taxes;]certify that s/he has authority;

(F) Association. In the case of an association, the requirements for corporations shall be followed;

(G) Trustee Under Agreement or Declaration. In the case of a taxpayer who has appointed a trustee, by the trustee. If there is more than one (1) trustee appointed, all should join unless it is shown that less than all have authority to act. Department of Revenue officials may require the submission of documentary evidence of the authority of the trustee to act. Evidence may be either a copy of the trust instrument, properly certified, or certified copies of contracts from the trust instruments showing[—]:

1. The date of the instrument;
2. That it is or is not of record in any court;
3. The beneficiaries;
4. The appointment of the trustee, the authority granted and other information as may be necessary to show that authority extends to Missouri tax matters; and

5. That the trust has not been terminated and the trustee appointed in the trust is still acting. In the event that the trustee appointed in the original trust instrument is no longer acting and has been replaced by another trustee, documentary evidence of the appointment of the new trustee should be submitted;

(H) Dissolved Partnership. In the case of a dissolved partnership, by each of the former partners, or by one [(1)] of the partners duly authorized to act for the partnership, who shall provide evidence of their authority to act. If one [(1)] or more of the partners are dead, their legal representatives must sign in their stead (see subsection (4)([K]L) of this rule), unless, under the laws of the particular state, the surviving partners, at the time of execution of the power of attorney or tax information authorization, have exclusive right to control and possession of the firm's assets for the purpose of winding up its affairs, in which case their signatures alone will be sufficient. If only the surviving partners sign the power of attorney, Department of Revenue officials may require the submission of a copy of, or a citation to the pertinent provisions of, the state law under which the surviving partners claim authority without legal representatives of the deceased partners;

(I) Dissolved Corporation. In the case of a dissolved corporation, by the liquidating trustee(s) under dissolution, if one [(1)] or more have been appointed, or by a trustee deriving authority under a statute of the state in which the corporation was organized. If there is more than one [(1)] trustee, all must join unless it is established that less than all have authority to act in the matter under consideration. Department of Revenue officials may require the submission of a properly authenticated copy of the instrument under which the trustee derives [his/her] the trustee's authority. If the trustee's authority is derived under a state statute, Department of Revenue officials may require the submission of a copy of or a citation to the pertinent provisions of the statute, together with a statement made under penalties of perjury setting forth the facts required by the statute as a condition precedent to the vesting of authority in the trustee and stating that in the case of any trustee, [his/her] the trustee's authority has not been terminated. If there is no trustee, the power of attorney must be signed by a sufficient number of individuals to constitute a majority of the voting stock of the corporation as of the date of dissolution. Department of Revenue officials may require submission of a statement showing the total number of outstanding shares of voting stock as of the date of dissolution, the number of shares held by each signatory to the power of attorney, the date of dissolution and positive averments as to the nonexistence of any trustee;

(J) Insolvent Taxpayer. In the case of an insolvent taxpayer, by the trustee, receiver or attorney appointed by the court. Department of Revenue officials may require the submission of a certificate from the court having jurisdiction over the insolvent showing the appointment and qualification of the trustee, receiver or attorney and that [his/her] authority of the appointed individual has not been

terminated. In cases pending before a district court of the United States, an authenticated copy of the order approving the bond of the trustee, receiver or attorney will meet this requirement; [and]

(K) [Deceased Taxpayers]Estate. In the case of [a deceased taxpayer]an estate, by [the]any conservator or personal representative[if one (1) has been appointed and is acting and responsible for disposition], who shall provide evidence of [the matter under consideration]status as a conservator or personal representative. Department of Revenue officials may require the submission of authenticated copies of letters testamentary or letters of administration showing that the authority of the [executor]personal representative or [administrator]conservator is in full force and effect at the time the power of attorney is submitted[.]; and

(L) Deceased Taxpayers. In the [event that]case of a [trustee under the will]deceased taxpayer, by the personal representative of a probate estate if one has been appointed and is acting[, the power of attorney should be executed by the trustee, unless the personal representative has not been discharged and is] and responsible for disposition of the matter[. Department of Revenue officials may require the submission of evidence of the discharge of the personal representative and appointment of the trustee, or other appropriate evidence of the authority of the trustee to act.] under consideration. If no personal representative [or trustee under the will]is acting or responsible for disposition of the matter[and], or the estate has been distributed to the residuary legatee(s), the power of attorney should be executed by the [residuary legatee(s).]individual appointed to handle the affairs of the deceased in a will. Department of Revenue officials may require the submission of a statement from the court certifying that no personal representative or trustee under the will is acting or responsible for disposition of the matter, and [naming the residuary legatees and indicating the proper share to which each is entitled.]copies of the will. In the event that the decedent died intestate and the personal representative has been discharged and is not responsible for disposition of the matter, or none was ever appointed, the power of attorney must be executed by the distributees. Department of Revenue officials may require the submission of evidence of the discharge of the personal representative if one had been appointed and evidence that the personal representative is not responsible for disposition of the matter and statements made under penalties of perjury and other appropriate evidence as can be produced tending to show the relationship to the deceased of the signatories to the power of attorney and the right of each of them to the respective shares claimed under the law of the domicile of the deceased.

(5) The execution of a power of attorney by the taxpayer allows the representative to obtain copies of all confidential information in the hands of the Department of Revenue with respect to the tax matters designated by the taxpayer. In addition, the authorized representative is permitted to represent the taxpayer before the Department of Revenue with respect to the tax matters designated by the taxpayer.

(6) [A power of attorney is necessary in the following situations] Instances a power of attorney is required include, but are not limited to:

(A) During audit if someone other than the taxpayer is to provide information to the auditor or to receive information (including the audit report) from the auditor;

(B) When the taxpayer protests an assessment to the [d]Director of [r]Revenue and is to be represented by someone other than him/herself; and

(C) Where the taxpayer's representative appears on behalf of the taxpayer before the Department of Revenue.

(7) If an individual taxpayer has executed a durable power of attorney, it is not necessary that the taxpayer execute any other power of attorney[.] if the durable power of attorney specifies that the power of attorney has the authority to act on tax matters and the power to receive confidential tax information. The duly authorized representative [should]must submit a copy of the durable power of attorney to the [d]Department with [his/her] the representative's request for confidential information. If the power of attorney document does not provide sufficient information for the Department of Revenue to determine the identity of the taxpayer, then the Department of Revenue may request a form prescribed by the Director.

(8) [The]If the taxpayer executes a second power of attorney, the taxpayer shall specify whether the execution of a second power of attorney [by the taxpayer for the same period as a previously filed power of attorney form]revokes the prior named representative's authority[unless otherwise indicated by the taxpayer]. The taxpayer may revoke a power of attorney granted to a representative without authorizing a new representative. [Upon revocation of a power of attorney when no new power of attorney is executed, the taxpayer must send a signed statement to the Department of Revenue listing the names and addresses of the representative(s) whose authority is revoked.]

(9) If the mailing address a taxpayer has furnished the Department of Revenue is the mailing address of a third party (for example, John Doe, c/o Jane Smith, C.P.A.), the Department of Revenue will treat this as a release of confidential tax information to the named third party. As a result all tax information, returns, reports, billing notices and deficiencies will be forwarded to the taxpayer[,] using the address as supplied by the taxpayer for that specific tax. Submission of a power of attorney form by a taxpayer will not in itself suffice as an official notification of mailing address change with the department.

AUTHORITY: section 32.057.2(1)(a), RSMo 2000. Original rule filed June 17, 1986, effective Nov. 28, 1986. Amended: Filed May 12, 1987, effective Aug. 27, 1987. Amended: Filed June 15, 1998, effective Dec. 30, 1998. Amended: Filed Jan. 10, 2002, effective July 30, 2002.*

**Original authority: 32.057, RSMo 1979, amended 1980, 1983, 1993, 1994, 1996.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions zero dollars (\$0) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities zero dollars (\$0) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing scheduled.